

The 17th July, 1981

No. 9(1)-81-8Lab/7826.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Faridabad, in respect of the dispute between the workmen and the management of M/s Sovrin Knit Works, Mathura Road, Faridabad.

**BEFORE SHRI M.C. BHARDWAJ, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL,
HARYANA, FARIDABAD**

Reference Nos. 235 and 239 of 1978

between

Shri Nabi Hussain and Dil Mohammad, workmen and the management of M/s. Sovrin Knit Works, Mathura Road, Faridabad.

Present :

Shri S. R. Gupta for the workmen.
Shri S. L. Gupta for the management.

AWARD

By order No. ID/FD/45-78/33187, dated 17th July, 1978, the Governor of Haryana referred the following dispute :—

Whether the termination of services of Shri Nabi Hussain was justified and in order ? If not, to what relief is he entitled ?

By order No. ID/FD/43-78/33182, dated 17th July, 1978, the Governor of Haryana referred the following dispute :—

Whether the termination of services of Shri Dil Mohammad was justified and in order ? If not, to what relief is he entitled ?

between the management of M/s. Sovrin Knit Works, Mathura Road, Faridabad and its workmen Shri Nabi Hussain and Shri Dil Mohammad, to this Tribunal, for adjudication, in exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947.

On receipt of the order of references notices were issued to the parties. The parties appeared and filed their pleadings. On the pleadings of the parties, following issues were framed on 11th January, 1979 :—

- (1) Whether the workman was in the employment of the management at the relevant period ?
- (2) If issue No. 1 is proved whether termination of services of the workman was justified and in order ?
- (3) If not, to what relief is he entitled ?

And by order of the even date both the references were consolidated for recording of evidence in reference number 235 of 1978 by my learned predecessor. The case was then fixed for the evidence of the workmen, who examined themselves as WW-1 and WW-2. Then the

case was fixed for the evidence of the management who examined Shri N.K. Sethi as Time Keeper and closed its case. Arguments were heard. Now I give my finding issue wise :--

Issue No. 1.—WW-1 stated that he worked for about two years in the respondent company as a Tailor Sampleman. There was no complaint against his work. He was stopped entry at the factory gate by the management. He tried a number of times for duty but to no avail, therefore, he submitted demand notice Ex. W-1. He produced identity card Ex. W-2 issued by the company, post card Ex. W-3 to W-7 which were received from his relations on the company's address. In cross examination he stated that he was not a member of Provident Fund, nor of the E.S.I. No attendance card was given to him although others get it but Tailors did not get. Attendance was taken at the gate alongwith other workers and also in the store office. WW-2 stated that he was working as a Sampleman for the last one year. There was no complaint against him. On 30th March, 1974 he was stopped entry at the gate without any reason. He tried a number of times but to no result. He issued demand notice Ex. W-8. Ex. W-9 was his job card issued by the company. He was issued scissors by the Store Incharge *vide* Ex. W-10. Ex.-11 to W-14 were money-order coupons which he sent to his relations from company address. Post card Ex. W-15 to W-24 were received by him at company's address. Other letters were Ex. W-25 to W-27. In cross examination he stated that he did not receive attendance card. But attendance was marked along with other workers and he received wages also along with others. He denied the suggestion that he was an employee of the Contractor. He was appointed at the factory gate like others. He had a talk with the Security Incharge for employment and he produced him before Shri D.D. Verma.

MW-1 stated that he had brought attendance register, Payment of Wages Register, E.S.I. record of March, 1978, Nabi Hussain and Dil Mohammad were not in the employment of the management during this period. But work of garment making was done through contractors. There was a separate shed for the Contractors. He did not know the workers engaged by the Contractor. In cross examination he stated that the shed was owned by the management. The entrance for the shed and its exit was the same which was meant for employees of the management. He could not give the names of contractors of March, 1978. He did not know if the management had any licence to get work done through contractors. He did not know if the management had executed any contract deed, nor he knew if the contractors had registered themselves for a licence. He admitted that cloth and design was given by the management to the contractors. He further stated that he was not in the service of the management in the year 1977. He admitted that Ex-W-1 job card was issued by the management. He also admitted Ex.W-2 to be identity card of the management.

I have considered the evidence as well various documents placed by the workmen on the file. Job Card Ex. W-9 is a printed card having name of the respondent management. Name is given as Dil Mohammad and from 1st September, 1977. Ex. W-10 is a slip of the management with name of Shri Dil Mohammad and it was for one scissor. Ex. W-2 is identity card issued by Sovrin Knit Works with photo and name of Nabi Hussain workman with stamp of Sovrin Knit Works and sealed signatures of issuing authority. Others are postcards, letters and money order coupons having address of the workmen C/o the management.

The learned representative for the workmen argued that these documents lead to inference that the workmen were engaged in doing work within the premises of the respondent management. Identity card job work etc. were admitted to be documents of the company by MW-1. Cards, letters etc. show that the workmen were working in the company in the year 1977 to 1978. He further argued that the management did not lead any evidence to show as to why and how the workmen were allowed to work within the premises of the company. In case they were not its employees and also the reason for issue of job card etc. to these workmen. As regards their names not finding place in the records of the management, this record was maintained by the management and not by the workmen.

It is for the management to write or not to write the name of one category of person or some individual workman in the list maintained by it. He also argued that the contention of the management about contractors, no contractor was produced in evidence, nor a copy of deed executed by the contractors even a licence also was not produced under the Contract Labour Act. On the other hand the learned representative for the management argued that the names of the workmen were not in the company register, therefore, they were not their employees. He also argued that the burden of proof was on the workmen to establish relationship of Master and Servant.

I have considered the arguments of both the parties and find force in the contention of the learned representative for the workmen. As regards the onus of proof it is correct that it was upon the workmen but the same shifted to the management when the workmen produced documents of the management and other papers showing their presence within the premises of the management for a long period. The management failed to discharge that shifted onus by producing any cogent evidence. I point out that a negative evidence is no evidence. It should have been produced positive evidence as to under which circumstance these workmen were allowed entry and work within the premises of the management, therefore, I hold issue No. 1 in favour of the workmen.

Issue No. 2.—It is admitted fact that in the stand taken by the management, there was no proof of chargesheet, explanation or termination whatsoever of the workmen, therefore, the termination of services of the workmen which was not proved by the management, it unjustified and unlawful.

Issue No. 3.—The workmen are entitled to reinstatement with continuity of service and with full back wages.

While answering the reference, I give my award that the termination of services of the workmen were neither justified, nor in order. Shri Nabi Hussain and Dil Mohammad workmen are entitled to reinstatement with continuity of service and with full back wages. I order accordingly.

The 27th June, 1981.

M.C. BHARDWAJ,
Presiding Officer, Industrial Tribunal,
Haryana, Faridabad.

No. 627, dated the 30th June, 1981.

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

M.C. BHARDWAJ,
Presiding Officer, Industrial Tribunal,
Haryana, Faridabad.

No. 9(1)-811-8Lab./8246.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Faridabad, in respect of the dispute between the workman and the management of M/s The Gurgaon Central Co-operative Consumer Stores Ltd., Gurgaon.

BEFORE SHRI M. C. BHARDWAJ, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, HARYANA, FARIDABAD

Reference No. 303 of 1979
between

SHRI PRITHVI RAJ KAPOOR, WORKMAN AND THE MANAGEMENT OF
M/S. THE GURGAON CENTRAL CO-OPERATIVE CONSUMERS
STORES LIMITED, GURGAON

Present :

Shri S. K. Goswamy for the workman.
Shri S. K. Yadav for the management.

AWARD

By order No. GG/35-79/41972, dated 24th September, 1979, the Governor of Haryana referred the following dispute between the management of M/s. The Gurgaon Central Co-operative Consumers Stores Limited, Gurgaon and its workman Shri Prithvi Raj Kapoor, to this Tribunal, for adjudication, in exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 :—

Whether the termination of services of Shri Prithvi Raj Kapoor was justified and in order ? If not, to what relief is he entitled ?

On receipt of the order of reference notices were issued to the parties. The parties appeared and filed their pleadings. On the pleadings of the parties, following issues were framed on 26th July, 1980 :—

- (1) Whether this Tribunal has no jurisdiction to adjudicate this reference ?
- (2) Whether the termination of services of the workman was justified and in order ?
- (3) Relief ?

And the case was fixed for the evidence of the management, who examined Shri Man Singh, Officiating General Manager as MW-1 and closed its case. Then the case was fixed for the evidence of the workman, who examined himself as WW-1 and closed his case. Arguments were heard. Now I give my finding issues-wise :—

Issue No. 1.—The contention of the management is that the respondent is a society under the Punjab Co-operative Societies Act and the dispute was touching the absence of the society, therefore, the Industrial Dispute Act was not applicable.

The Industrial Disputes Act was a special Act passed by the Parliament to make provision for the investigation and settlement of the Industrial Disputes. It is held in I.F.I.R. Vol-II 1974, page 295, where an employee of Co-operative Society raises industrial dispute under the Industrial Disputes Act for termination of his services the Industrial Tribunal had jurisdiction as Co-operative Society is also Industry. This issue is, therefore, decided against the management.

Issue No. 2.—MW-1 stated that he had brought the relevant record. The workman was a clerk-cum-typist. Exhibit M-1 was copy of his appointment letter. Exhibit M-2 was his joining report. His services were terminated,—*vide* Exhibit M-3. He was paid one month's notice pay at the time of termination. His termination was a simplicitor. His appointment was on probation. His work was not satisfactory. Exhibit M-4 to M-7 were explanation letters were issued to him, extract from staff service rules was Exhibit M-8. His services were terminated according to the terms and conditions of his appointment letter. In cross-examination he stated that no enquiry was held against him, nor any show cause notice or personal hearing was given. Probation period was for 12 months extendable by another 12 months. No letter of extention was given to the workman. He was not paid any other compensation except one month's notice pay. He did not know on what date Shri Sat Narain Jain had made a complaint against the workman because at that time he was not posted in the Store. He did not know in whose hand date on Exhibit M-7 was written. It may be 12th March or 13th March or 3rd March, 1979. Exhibit M-5, M-6 and M-8 were delivered through Peon. There was no despatch number on Exhibit M-5.

WW-1 the concerned workman stated that the joined services of the management on 14th June, 1977. He worked for about two years. The management had called his

explanation which he replied on 5th March, 1979. He was not given any chargesheet. Shri Sat Narain Jain had made complaint after 6-7 months of his transfer from Gurgaon that he had given beating to Shri Jain. No enquiry was held into that complaint. No show cause notice or personal hearing was given, nor any notice pay or compensation was given to him at the time of termination. He did not receive Exhibit M-3, M-5 and M-6. He received Exhibit M-7. He was given Exhibit M-1 at the time of his joining service. No separate terms and conditions were delivered to him. In cross-examination he stated that Exhibit M-2 was his joining report. His services were terminated on 10th March, 1979. He denied his signatures on Exhibit M-4. He denied that he was given one month's notice pay. He further stated that he was not given wages for the month of February, 1979. He was not given any confirmation or regularisation letter. He denied the suggestion that he was working in Bitco Factory, Faridabad and earning more.

The learned representative for the management argued that the workman was on extended probation. His work was not satisfactory and he was discharged by paying one month's notice. On the other hand the learned representative for the workman argued that it was not a case of discharge simplicitor. The management produced some complaints against him. No explanation was called for, nor any domestic enquiry was held, nor the workman was chargesheeted. The action of the management amounted to retrenchment as held in 1980 Lab. I.C. Vol. 13 page 1292 and 1980 Vol. 13 Lab. I.C. page 687. He also cited AIR 1937 Lahore page 593, AIR 1966 Allahabad, page 570, AIR 1951 Orissa, page 313 and also CPC order IX. He argued that the documents placed on file by the management were inadmissible as held in the above rulings.

I think the learned representative for the workman lost sight of the fact that the Indian Evidence Act, was not applicable to the proceedings before the Tribunal, nor the provision of CPC except expressly laid down in the Industrial Disputes Act. The management had not taken into account the documents or the complaints against the workman while passing order of discharge. According to para 6 to the written statement the workman was a temporary employee. He was not a probationer as contended by the learned representative for the management. Appointment letter Exhibit M-1 has a condition in the following words :—

"Your services are liable to be terminated at any time without assigning any reason or notice".

The operative part of the termination letter Exhibit M-3 is as under :—

"As per the orders of the Chairman of the store your services are terminated with effect from 10th March, 1979. You will be paid one month's salary in lieu of one month's notice. You are directed to settle your accounts with the store and hand over your charge of goods and records to Shri Sada Ram and Shri Ranbir Singh Rathee, respectively, immediately".

This order does not speak of any misconduct or stigma against the workman. It is held in 1980 II LLJ-page 156 as under :—

"It is manifest that even if misconduct, negligence, inefficiency may be the motive or the inducing factor which influences the employer to terminate the services of the employee, a power which the appellants undoubtedly possessed, even so as under the terms of appointment of the respondent such a power flowed from the contract of service it would not be termed as penalty or punishment."

As regards the contention of the learned representative for the workman that the action amounted to retrenchment. I fully agree with him but in the instant case one month's notice pay was offered to the workman according to termination letter. There

is a note in the hand of Shri Rathee and another clerk that the workman refused to receive termination letter after reading the same, therefore, it was within the full knowledge of the workman that he was to receive one month's notice pay at the time of his handing over charge. I decide this issue in favour of the management.

Issue No. 3.—The workman is not entitled to any relief.

While answering the reference, I give my award that the termination of services of the workman was justified and in order. The workman is not entitled to any relief.

M. C. BHARDWAJ,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

Dated the 3rd July, 1981.

No. 656, dated the 13th July, 1981.

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

M. C. BHARDWAJ,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

No. 9(1)81-8Lab/8247.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Faridabad in respect of the dispute between the workman and the management of M/s. Escorts Charitable Ayurvedic Hospital, Faridabad :—

**BEFORE SHRI M.C. BHARDWAJ PRESIDING OFFICER, INDUSTRIAL TRIBUNAL,
HARYANA, FARIDABAD**

Reference No. 580 of 1978
between

Shri Khem Chand, workman and the management of M/s. Escorts Charitable Ayurvedic Hospital, Faridabad.

Present.— Shri S.R. Gupta, for the workman.
Shri S.S. Sethi, for the management.

AWARD

By order No. 11/179-78/56516, dated 19th December, 1978, the Governor of Haryana referred the following dispute between the management of M/s. Escorts Charitable Ayurvedic Hospital, Faridabad and its workman Shri Khem Chand, to this Tribunal, for adjudication, in exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 :—

Whether the termination of services of Shri Khem Chand was justified and in order ? If not, to what relief is he entitled ?

On receipt of the order of reference, notices were issued to the parties. The parties appeared and filed their pleadings. On the pleadings of the parties, following issues were framed on 23rd August, 1979 :—

(1) Whether the claim statement is invalid for the reason that it was not signed by the workman.

- (2) Whether the dispute is not covered by section 2-A of the I. D. Act ?
- (3) Whether the management is not an Industry ?
- (4) Whether the workman has left the services of his own ?
- (5) If issue No. 4 is not proved whether the termination of services of the workman was justified and in order ? If not, to what relief is he entitled ?
- (6) If issue No. 4 is not proved whether the management did not terminate the services of the workman ?

And the case was fixed for the evidence of the management who examined Dr. S.L. Basant as MW-1 and closed the case of the management. Then the case was fixed for the evidence of the workman, who examined himself as WW-1 and closed his case. Arguments were heard. Now I give my finding issues-wise :—

Issue No. 1.—This issue was not pressed.

Issue No. 2.—This is a dispute between Shri Khem Chand and the management, respondent. Matter under dispute is whether termination of services of Shri Khem Chand was justified and in order ? If not, to what relief is he entitled ? Under Section 2-A of the I.D. Act no espousal of the dispute from co-workmen was necessary. The termination was a very wide term. The contention of the learned representative for the management that according to the management workman abandoned his job and his services were not terminated has also no force because issue of termination was justiciable. This issue, is therefore, decided against the management holding that the dispute was covered under section 2-A of the I.D. Act.

Issue No. 3.—The learned representative for the management argued that the respondent was not an Industry and it was charitable hospital run on no profit motive. On the other hand the learned representative for the workman argued that the hospital was run and founded by M/s. Escorts Ltd. He cited Bangalore Water Supply and Sewerage Board case reported in 1978 ILLJ, page 349 and I find that after the pronouncement of this historic case by their Lordships of the Supreme Court it was hardly a moot point to discuss the profit motive or otherwise in deciding if a particular management was an Industry. This issue on the ratio of the above ruling is decided against the management.

Issues Nos. 4, 5 and 6.—These issues are inter-related, therefore, these are taken up together. MW-1 stated that application photo copies Ex. M-5 to M-7 were given by the workman. He interviewed him and issued a letter of appointment copy Ex. M-8. He was appointed on a consolidated salary of Rs. 175 per mensem and another application copy Ex. M-9 was given by the workman on 12th July, 1978. In 12th August, 1978 a letter copy Ex. M-10 was written to him. Another letter M-11 was also written. The workman came on 31st August, 1978 and settled his accounts in full and final settlement. Copy of receipt was Exhibit M-12. Undated application from the claimant was copy Ex. M-13 which was received by him from the personnel department of M/s. Escorts Limited. In cross-examination he stated that the concerned workman was an Assistant Compounder. Letter Exhibit M-11 was sent by U.P.C. He did not produce U.P.C. receipt. Letter Ex. M-10 was sent by post but could not say if the same was sent by U.P.C. or ordinary post. Ex. M-12 was prepared by Shri V. P. Gautam, Assistant, in his presence. He further stated that per practice of the hospital whenever a workman goes out of employment a certificate from him was got for full and final settlement and payable amount in such cases was only his salary. Ex. M-12 contain amount of salary Rs. 231. No application like Ex. M-13 was received from him. He denied the suggestion that payment of Rs. 231 was made to him on the basis of his request in Ex. M-13. He also denied the suggestion that the workman was asked to sign Ex. M-12 which already prepared while paying him his earned wages.

WW-1 the workman concerned stated that he was in the employment for 1½ years. No charge-sheet was ever issued to him. At the time of termination of his services he was drawing Rs. 300 per mensem. He went on five days leave due to illness of his mother. The condition of his mother became serious, therefore, he sent for extension of leave for one month by post. On completion of leave he reported for duty on 26th August, 1978. For 2-3 days the management lingered on and told him on 28th August, 1978 that his services were not required. He further stated that he had taken only wages from the management and not his full and final settlement. He never received letter Ex. M-10 and M-11, nor he wrote letter Ex. M-6 to the management. He had only applied for leave to appear in the examination. In cross-examination he stated that he joined service on 24th January, 1977. He had applied for service but no appointment letter was given to him. He admitted his signatures on Ex. M-14 to M-17. Ex. M-17 contain signature of Dr. Sohan Lal Basant Incharge also and so Ex. M-18. He was on daily wages but it was written that his rate of daily wages was Rs. 7. He received his wages on a separate paper in the end of the month. He had sent application for extension of leave on 25th July, 1978 by registered A. D. post and he had received A.D. slip. Postal receipts were Ex. W-1 and W-2. One application was sent by him for leave from 19th July, 1978 to 24th July, 1978 and second from 25th July, 1978 to 25th August, 1978 by registered post. He further replied that he was issued letter Ex. M-16 to regularise his service. But it was got signed by him by the Doctor Incharge saying that his salary should be more whereas he had told him that he was ready to work on this salary. He had written letter Ex. M-17. He denied that he was absent on account of offering him less wages by the management.

The learned representative for the management argued that the workman absented himself and settled his accounts. He resigned on 24th July, 1977, —vide Ex. M-6. There was a regular vacancy and he was appointed,—vide Ex. M-8 on Rs. 175 per mensem. The workman applied for a new grade and then absented. On the other hand the learned representative for the workman argued that the workman had gone to attend his ailing mother and applied for extension of leave. When he came to join duty after leave he was not allowed by the management. He further argued that the burden to prove abandonment was on the management and there was no letter showing intention to abandon the job. He further argued that the workman had demanded only his wages and never written that he may be given full and final accounts.

I have gone through the documents placed on the file. Ex. M-13 is a letter from the workman in which he states that he had proceeded on leave from 19th July, 1978 to 23rd July, 1978 and sent another letter for extension of leave from 25th July, 1978 to 25th August, 1978. He may be taken on duty and paid his wages. Ex. M-6 is a letter by which the workman had applied for settlement of his accounts for the period upto 24th December, 1977 on account of his going for appearing in examination. I have also gone through Ex. M-16 which was offered by the management that he will be paid consolidated salary of Rs 175 per mensem. The acceptance was in type written on this letter which was as under :—

“I have read and understood the above terms and conditions and hereby signify my acceptance of the same.

(KHEM CHAND SHARMA)

1-6-1978.

The workman signed this with a note in his hand that the grade was not acceptable to him and he was submitting a separate letter. That letter was Ex. M-9 in which he has given the reason for his not acceptance of the grade and he stated that at the present rate of his wages after deduction of wages for four close days he was getting Rs 182 per mensem. He has further written that he was a graduate and even a Mali was getting Rs. 300 per mensem. He had also written that he had to put in some overtime work also. In the concluding para he has prayed that he may be given a new grade and further that he was hoping that he will not be disappointed. In case there was any deficiency in the letter he may be pardoned.

As regards letter Ex. M-10 and M-11 it is admitted by MW-1 that he could not give any postal receipt of the despatch of the letter whereas the workman denied having received these letters. These letters pertain to showing the workman as absent and reminding him of collecting his unpaid wages, therefore, reliance cannot be placed on these letters. I do not gather from any of the document that the workman ever showed his intention to abandon the job, rather on the other hand he has given explanation of his leave. The management thus has failed to discharge the burden to prove abandonment by any cogent evidence. I find the bone of dispute was not acceptance by the workman of salary of Rs. 175 offered,—*vide* letter dated 1st June, 1978 (Ex. M-16). This was undoubtedly less beneficial to the workman as compared to his present wages. The workman had completed 1½ years of service. Argument of his learned representative that not providing duty was amounted to termination and such termination was held to be retrenchment in the latest decision of the Supreme Court in *Santosh Gupta versus State Bank of Patiala* in 1980 II LLJ page 72. The contention is refuted by the learned representative for the management that the workman did not have a continuous service.

I have given my thoughtful consideration to this point and find that termination by the employer of the service of a workman has for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, amounting to retrenchment under the I.D. Act and the ruling in *Santosh Gupta versus State Bank of Patiala* was fully applicable to the case. About second contention I find support from the verdict of their Lordships of the Supreme Court in case of *Surinder Kumar Verma versus Industrial Tribunal, Delhi* reported in 1981 I LLJ page 408 in which it is held that continuous service meant that workman must have worked for at least 240 days in one year though it was not necessary that he had been in continuous service for one year, therefore, the termination of the workman was unjustified and not allowing duty amounted to termination of services by the management. I, in the circumstances, decide all the three issues against the management.

While answering the reference, I give my award that the termination of services of the workman was neither justified, nor in order. The workman is entitled to reinstatement with continuity of service and with full back wages. I order accordingly.

The 3rd July, 1981.

M.C. BHARDWAJ,
Presiding Officer, Industrial Tribunal,
Haryana, Faridabad.

No. 657, dated 13th July, 1981.

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

M.C. BHARDWAJ,
Presiding Officer, Industrial Tribunal,
Haryana, Faridabad.

No. 9(1) 81-8 Lab./8251.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Faridabad in respect of the dispute between the workman and the management of M/s. Escorts Limited, Plant-I, Mathura Road, Faridabad:—

BEFORE SHRI M. C. BHARDWAJ, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, HARYANA, FARIDABAD

Reference No. 283 of 1978

between

SHRI SURJIT SINGH WORKMAN AND THE MANAGEMENT OF
M/S. ESCORTS LIMITED, PLANT-I, MATHURA ROAD, FARIDABAD
Present.—

Shri R. N. Roy for the workman.

Shri S. S. Sethi for the management.

AWARD

By order No. ID/FD/17-H-75/34841, dated 25th July, 1978, the Governor of Haryana referred the following dispute between the management of M/s. Escorts Limited, Plant-I, Mathura Road, Faridabad and its workman Shri Surjit Singh, to this Tribunal, for adjudication in exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 :—

Whether the termination of services of Shri Surjit Singh was justified and in order ?
If not, to what relief is he entitled ?

On receipt of the order of reference, notices were issued to the parties. The parties appeared and filed their pleadings. On the pleadings of the parties following issues were framed on 8th December, 1978 :—

1. Whether the dispute not covered under section 2(a) of the I.D. Act ?
2. Whether Shri Surjit Singh is not a workman as defined in section 2(s) of the Industrial Disputes Act ?
3. Whether the reference is bad for the reason that the Government did not give opportunity to the management of hearing before referring the dispute after previously rejected ?
4. Whether the workman left the services of the Company without notice under Certified Standing Orders of the management ?
5. If issue No. 4 is not proved, whether the termination of services of the workman was justified and in order ? If not, to what relief is he entitled ?

And the case was fixed for the evidence of the management who examined Shri Hans Rah, Time Keeper as MW-1 and Shri N.S. Ratra, Industrial Relation Officer as MW-2 and closed its case. Then, the case was fixed for the evidence of the workman, who examined himself as WW-1 and Shri M.L. Verma, Head Assistant, office of the Labour Commissioner, Haryana, Chandigarh as WW-2 and closed his case. Arguments were heard. Now I give my finding issue-wise :—

Issue No. 1.—The learned representative for the management contended that the present case was a case of abandonment of service, therefore, the dispute was not covered by section 2-A of the Industrial Disputes Act. The matter under reference is whether the termination of the services of Shri Surjit Singh was justified and in order ? If not, to what relief is he entitled ? According to the demand notice the services of the workman were terminated by not allowing him duty w.e.f. 9th December, 1975. In section 2-A it is given as under :—

“Where any employer discharges, dismisses, retrenches, or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute, notwithstanding that no other workman nor any union of workmen is a party to the dispute.”

The contention of the parties is a justiciable point and it was perfectly within the ambit of section 2-A. This issue is, therefore, decided against the management.

Issue No. 2.—According to the objection number 2 of the written statement the workman was not as such under section 2(S) of the Industrial Dispute Act because the dispute

has not arisen out of dismissal, discharge etc. and the claimant had left the services of the company. This objection is again technical and converse of issue No. 1 and had no force, rather according to the definition the workman was fully covered by section 2(S). This contention has no force, therefore, this issue is decided against the management.

Issue No. 3.—On this issue the learned representative for the management drew my attention to Exhibit M-13 by which the Government had rejected the dispute,—*vide* letter dated 24th February, 1976. He argued that the Government did not give a chance to the management and there were no fresh circumstances under which the reference could be made. This controversy was set on rest by their Lordships of the Supreme Court in Avon Services (Production Agency) Private Ltd. V/s. Industrial Tribunal, Haryana, Faridabad, reported in 1979 I LLJ page 1 in which it was held that “The expression “at any time” in Section 10(1) will clearly negative the contention that once the Government declines to make a reference the power to make a reference under section 10(1) in respect of the same dispute gets exhausted. Such a construction would denude a very vital power conferred on the Government in the interest of industrial peace and harmony and it need not be whittled down by interpretative process.” Thus there was no infirmity in the order of reference and the Government was fully competent to make the present reference. This issue is also decided against the management.

Issue No. 4.—MW-1 stated that Exhibit M-1 was copy of attendance record pertaining to the workman. The attendance was maintained by him and the entries were in his hand. He further stated that the management did not receive any application for the period of 28th November, 1975. In cross-examination he stated that register pertains to the workmen of M/s. Escorts Limited Plant I. The letter “F” stood for 1st shift and “S” for second shift. On 8th December, 1975 after working hours the name of the workman had been struck off. He further replied that a note was put up to the Officer for necessary orders whenever the workman was found absent. The name of the workman was struck off on the orders of the Officer. Letters were received in the receipt section A. D. letters were entered into a diary but ordinary letters were not so entered. Receipt section was not under him. MW-2 stated that Certified Standing Orders were applicable to the factory, copy was Exhibit M-3. Copy of attendance register was Exhibit M-2. Shri M.D. Gera was Deputy Manager Personnel. He expired in June, 1978. His signature is identify on Exhibit M-4. The original of Exhibit M-4 was sent by A.D. post. A.D. card was, Exhibit M-5. No reply was received by the management. Another letter was issued to the concerned workman, copy was Exhibit M-6 which was received back undelivered as Exhibit M-7. Exhibit M-9 was official copy of the letter. Four other memos were given to the workman copies of which were Exhibit M-10 to M-12. In cross-examination he stated that he had not brought the original Certified Standing Orders and, therefore, could not say the time of its certifying. Exhibit M-9 was delivered to the workman by hand and he signed its receipt on the letter. The original of Exhibit M-10 was sent by registered A.D. post, the original of Exhibit M-11 by UPC and original of M-12 by registered A.D. post. He could not tell if the letters were received by the concerned workman.

WW-1 stated that he joined the management on 14th April, 1968. He had gone on leave from 24th November, 1975 to 27th November, 1975. During that period he fell ill and sent application for extension of leave from 28th November, 1975 to 8th December, 1975 under UPC. Copy of application was Exhibit W-8 which was given to the Joint Labour Commissioner, Haryana at Chandigarh. He had fallen ill at the residence of his In-laws where he has gone to bring his wife and children. He came to Delhi on 29th November, 1975. He did not receive original of Exhibit M-4 and M-6, nor received any other communication from the management. He went to the factory to join his duty on 9th December, 1975. But Shri Gera, Assistant Personnel Officer told him that his name had been struck off. He raised the demand by original of Exhibit W-2. The Government first rejected the demand then referred it. He had told Shri Gera that he had fallen ill, therefore, he could not attend duty on 28th November, 1975 and had given medical and fitness certificate to him. In cross-examination he stated that he wrote original of Exhibit W-1 from the village of his In-laws from

Parwanu (H.P.) All the copies were prepared by him separately. No carbon was used. Annexure A on Exhibit W-1 in red circle was not in his hand. He had reached Delhi in the evening of 29th November, 1975. He denied the suggestion that Exhibit W-1 was prepared at Delhi. Exhibit WW-1/M-1 contain his signature. It was taken by Sudhir of the management for preparing a copy and returning the original to him but he did not return the same on one pretext or the other. He admitted that it was annexure of claim statement. He denied his signatures on Exhibit M-5 but admitted on Exhibit WW-1/X. The letter which was received by his brother was for asking him to join his duty. He could not say, Exhibit M-4 was the same letter. Medical certificate was taken from Delhi Doctor and not from Parwanu. UPC might have been with Shri M.K. Jain. That UPC was sent by him to Shri M.K. Jain from Parwanu. He denied the suggestion that he did not meet Shri Gera on 9th December, 1975. He further replied that fitness certificate was received from Delhi Doctor Ram Rakha Mal of Lajpat Nagar Centre Market. Fitness certificate was in his favour. WW-2 stated that he had brought summoned record. He produced a letter from the workman, dated 27th February, 1978 subject demand notice, dated 11th December, 1975 served by Shri Surjit Singh on the management. In the end of the letter was written DA/UPC. UPC bearing the seal of the Post Office was dated 2nd November, 1975. The UPC contain the following writing :—

"To the Personnel Manager, Escorts Ltd., Plant I 18/4, Mathura Road, Faridabad, Haryana, district Gurgaon (1 letter)." The UPC is Exhibit WW-2/1. In cross-examination he stated that letter, dated 27th October, 1978 was received by him. The letters, received in the office were stamped with office seal but it was not always necessary. UPC was attached with the letter, dated 27th February, 1978. He had brought the file from the record office. He further replied that word DA or UPC were in different ink. The sender of the letter was Sardar Surjit Singh, resident of C-4/60, Dayanand Colony, Lajpat Nagar, New Delhi-110024. There was no mention in the body of the letter that UPC was attached.

The learned representative for the management argued that the workman was sent letter, Exhibit M-4 to report back for duty but he did not return nor any letter was received from him, therefore, action was taken against him, under clause number 37 of the Certified Standing Orders copy, Exhibit M-3. He cited 1963 II LLJ 638, 1970 II LLJ 883, 1968 ILLJ 193 and 1981 LLN page 314 in which it was held that the management was within its right to take action under clause of the Certified Standing Orders where the workman absented for the period given in the Standing Orders. On the other hand the learned representative for the workman argued that the workman had gone on sanctioned leave but fell ill and applied for extension of leave from there. He did not receive intimation from the management and his services did not come to an end till notice, Exhibit M-6, dated 8th December, 1977 was served upon him. He cited 1978 I LLJ page 1. He further argued that the punishment was to be gathered from the intention of the workman who had no such intention and send application for leave under UPC.

There is no dispute about the absence of the workman on sanctioned leave and thereafter. However, the case of the workman is that he sent leave application on 28th November, 1975 to the management and sent to the UPC to Shri M.K. Jain, Joint Labour Commissioner, Haryana along with his demand notice. This U.P.C. was produced as Exhibit WW-2/1 by the official of the Labour Commissioner, Haryana, Chandigarh from his official file. This UPC contains address of the Personnel Manager, Escorts Ltd., Plant No. 1 18/4, Mathura Road, Faridabad, Haryana, district Gurgaon. The postal seal is dated 28th November, 1975, i.e., the date of letter Exhibit W-1 sent for extension of leave. The management has denied the receipt of any such letter from the workman. Under the law of evidence a presumption is attached to the posting of a letter under UPC. The other contention of the learned representative of the workman was that even otherwise the action of the management was not fortified by clause 37 of the Certified Standing Orders Exhibit M-3. Clause 37 of the Certified Standing Orders reads as under :—

Absence without leave and absence in excess of sanctioned leave.

"A workman who absents himself for ten consecutive days or overstays leave beyond the period of leave originally granted or subsequently extended for

ten consecutive days will be deemed to have left the services of the Company without notice. The Company in such a case need not give any notice of termination to the workman as it will be deemed to be a case of voluntary abandonment of service."

According to extract Exhibit M-1 the workman was on leave from 24th November, 1975 to 27th November, 1975. On 28th he was marked absent. 29th and 30th are shown as off day and Sunday. However in Exhibit M-2 in the month of December, he was shown as absent from 1st December, 1975 to 6th December, 1975 and 8th December, 1975. 7th being Sunday. From 9th onwards in the column is written struck off w.e.f. 8th February, 1975. I presume from clause 37 that absence means absence on a working day because none is presumed to report on a holiday. In such a situation total days of absence come to 8 including 8th of December, 1975 on which the name of the workman was struck off according to MW-1. The Certified Standing Officers provide absence of 10 days. As discussed by me the management contravened the provision of clause 37 of the Certified Standing Orders also.

The workman by producing UPC Exhibit WW-2/1 has established that he sent leave application to the management for extension of leave and had no intention to abandon the job. I have also held that the action of the management was not according to the Certified Standing Orders in striking off the name of the workman; therefore, this issue is decided against the management.

Issue No. 5.—As the above issue has been held against the management and the case is not of discharge or other misconduct. I find that striking off the name of the workman from the rolls by the management is termination of his services. Such termination of service is retrenchment within the meaning of section 2(OO) of the Industrial Disputes Act relying upon 1977 Lab. I.C. page 1695 (S.C.). Therefore, this issue is also decided against the management.

Relief:—The case has been hanging from 1975 and the reference was rejected previously by the Government and it is into evidence of WW-1 that further conciliation proceedings were held by the Conciliation Officer on fresh request of the workman and the Government decided to refer the matter for adjudication. It will be proper in the circumstances to grant the workman reinstatement with 75% of the back wages and other benefits of service.

While answering the reference, I give my award that the termination of services of the workman was neither justified nor in order. The workman is entitled to reinstatement with continuity of service but with 75% of the back wages. I order accordingly.

Dated, the 3rd July, 1981.

M.C. BHARDWAJ,

Presiding Officer, Industrial
Tribunal, Haryana, Faridabad.

No. 655, dated the 13th July, 1981.

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

M.C. BHARDWAJ,

Presiding Officer, Industrial,
Tribunal, Haryana, Faridabad.